

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CRIMINAL APPEAL No. 935 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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DILIPBHAI DEVAJIBHAI VALVI - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :

MR DP KINARIWALA for Appellant(s) : 1 - 9.
MR PD BHATE, APP for Opponent(s)

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 27/12/2007

ORAL JUDGMENT

This appeal arises out of a judgment and order dated 2nd March 2006 rendered by the learned

Additional Sessions Judge, Surat in Sessions Case No.25/2005.

2. The appellants were the original accused who were charged with offence punishable under sections 307, 147, 148 and 149 of the Indian Penal Code. The learned Additional Sessions Judge convicted the appellants under the above mentioned provisions and sentenced them to rigorous imprisonment for 6 years for offence punishable under section 307 read with section 147, 148 and 149 of the Indian Penal Code. They were also directed to pay fine of Rs.3,000/- each.

3. Broadly stated, the prosecution case was that the appellant had some old rivalry with one Sureshbhai Maganbhai Padvi. They, therefore, armed with deadly weapons like, sticks, dharia, axe, etc. formed an unlawful assembly and assaulted said Shri Sureshbhai and caused him serious injuries.

4. Insofar as involvement of the accused persons in the offence is concerned, in view of the fact that there were as many as four eye-witnesses who had given consistent, cogent and reliable depositions of the parts played by different accused persons, learned advocate Shri Kinariwala for the appellant did not seriously contest the issue. In other words, insofar as the acts alleged to have been committed by the appellants is concerned, no serious debate was made before me by the counsel for the

appellant.

5. In the present appeal, however, learned advocate Shri Kinariwala focused his attention to one aspect of the matter, namely, nature of injuries received by the injured person and the ultimate conclusion of the learned Additional Sessions Judge that the appellants had been guilty of attempt to commit murder. My attention was invited to the deposition of Dr.Jagdishchandra Patil, PW-1, Ex.23. He was the first doctor who had treated injured Sureshbhai. He was the Medical officer at the Primary Health Centre at Nizar. He stated that on 12.11.04, when he was on duty, injured Sureshbhai was brought to him by the police. He had found following injuries:

- (1)On right hand side of head one CLW which was bleeding.
- (2)Swelling on right elbow.
- (3)There was some injury on the middle toe of right foot which was bleeding.
- (4)Some injury on right knee of the patient.
- (5)On right side of chest near arm-pit, simple injury was noticed.

He referred the patient for further treatment to Nandurbar Government hospital. He had issued an injury certificate which was produced at Ex.24. In the certificate, he had stated that the nature of

injuries was simple.

6. My attention was also drawn to the deposition of Dr.Rajesh Valvi, PW-2, Ex.26. He was the medical officer at Nandurbar General Hospital at the relevant time. He had treated the patient. He had also noticed similar injuries. Significantly, he found one CLW of 1 c.m. x 2 c.m. x 1 c.m. on the right portion of the head. He stated that the injuries were of simple nature and could have been caused by hard blunt substance.

7. From the evidence on record, it can also be seen that the patient was admitted in the hospital only for 9 days before he was discharged upon complete recovery.

8. The question therefore is whether the learned Additional Sessions Judge was justified in convicting the appellants under section 307 of the Indian Penal Code read with section 149 of the Indian Penal Code and sentencing them to 6 years of rigorous imprisonment.

9. It is not in dispute that both the doctors who treated the patient found that the injuries were simple in nature. Except for the blow on the head, no other injury was even significant. Rest of the injuries were rather superficial in nature. On the head also, the injury did not cause corresponding

fracture in the skull nor did it cause any permanent damage or grievous hurt to the victim. Thus the conviction of the appellant under section 307 of the Indian Penal Code was wholly unjustified.

10. Considering the fact that the appellant had caused injuries which was stated to be simple in nature by two doctors, considering the fact that the patient was discharged within 9 days, the conviction could not have been under section 307 of the Indian Penal Code. The appellants had caused simple injuries. Such injuries were, however, caused with deadly weapons. Their conviction, therefore, would appropriately be under section 324 of the Indian Penal Code. The appellants' convictions are therefore converted into one under section 324 read with section 149 of the Indian Penal Code.

11. The appellants are in jail since 2nd March 2006. They have thus served out total sentence of about 1 year and 9 months. Considering the guilt, the sentence needs to be reduced to one already undergone.

12. It may be noted that the learned Additional Sessions Judge had not imposed any separate sentence for offence punishable under sections 147 and 148 of the Indian Penal Code. Maximum punishment for the said offence is 2 years and 3 years respectively. The appellants are awarded sentence of one year each for the aforesaid offence. All substantive sentences

shall, however, run concurrently.

13. In the result, following order is passed:

- (1) Conviction of the appellants under section 307 read with section 149 of the IPC is converted into one under section 324 read with section 149 of the Indian Penal Code. Sentence is reduced to one already undergone.
- (2) For offence punishable under section 147 of the Indian Penal Code, the appellants are sentenced to rigorous imprisonment for one year.
- (3) For offence punishable under section 148 of the Indian Penal Code, the appellants are sentenced to rigorous imprisonment for one year.
- (4) All substantive sentences shall run concurrently.
- (5) Directions for payment of fine remain unaltered.
- (6) In view of the above order, the appellants be released forthwith if not required in any other criminal case.

With the above directions, the appeal stands disposed of.

(Akil Kureshi, J.)

(vjn)